



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1998

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR98-1093

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115351.

The City of Mesquite (the "city") received a request for certain information pertaining to automobile accidents that have occurred on a certain portion of U.S. Highway 80 in Mesquite, Texas from 1987 to the present. You state that the Mesquite Police Department has released to the family members of an individual who was killed in the January 3, 1998 accident the "public copy" of the offense report concerning that accident. You assert that the requested information is excepted from required public disclosure based on section 552.103 of the Government Code. You also ask whether the city would waive section 552.103 by releasing portions of the requested information to the Texas Department of Transportation.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). This office has determined that the fact that a governmental body received a claim letter that it represents to the this office to be in compliance with the notice requirements of the Texas Tort Claims Act, Civil Practice and Remedies Code chapter 101, or applicable municipal ordinance, shows that litigation is reasonably anticipated. See Open Records Decision No. 638 (1996).

You assert that the information requested relates to reasonably anticipated litigation. You inform us that the city has received a letter from an attorney representing the heirs of the individual who was killed in the January 3, 1998 accident. You state that "[t]his letter gives the City notice of a claim for compensation from the City pursuant to the Texas Torts Claims Act for losses suffered by the representatives of the estate of Ms. McEnturff arising from this accident." We conclude that the city has established that litigation is reasonably anticipated. We also conclude that the requested information relates to the litigation. Thus, section 552.103 applies to the information, but with the following exceptions.¹

The city may not withhold from the requestor information that has been released to the deceased's family. Open Records Decision Nos. 349 (1982), 320 (1982). Nor may the city withhold from the requestor information that is made public by statute. See Open Records Decision Nos. 161(1977), 146 (1976). Thus, the city may not withhold autopsy reports. Code Crim. Proc. Art 49.25; see Open Records Decision No. 529 (1989). Furthermore, the city police department must release to the requestor the peace officer's accident report pertaining to the January 3, 1998 accident.² V.T.C.S. art. 6701d, § 47(b)(1). Finally, the city may not withhold the press releases based on section 552.103.

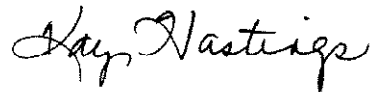
¹The applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

²The Seventy-fifth Legislature, repealed, codified, and amended V.T.C.S. article 6701d, concerning the disclosure of accident report information. Act of May 29, 1997, S.B.1069, § 13, 75th Leg., R.S. (To be codified at Transp. Code § 550.065). However, a Travis County district court has issued a temporary injunction enjoining the enforcement of section 13 of SB 1069 for ninety days. *Texas Daily Newspaper Association, et al., v. Morales, et al.*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Aug. 29, 1997) (order granting temporary injunction). A temporary injunction preserves the status quo until the final hearing of a case on its merits. *Janus Films, Inc. v. City of Fort Worth et al.* 163 Tex. 616, 617, 358 S.W.2d 589 (1962). The Supreme Court has defined the status quo as the last, actual peaceable, non-contested status that preceded the pending controversy. *Texas v. Southwestern Bell Telephone Co.* 526 S.W.2d 526, 528 (Tex. 1975). The status quo of accident report information prior to the enactment of SB 1069 is governed by section 47 of article 6701d, V.T.C.S.

We turn to question whether the city would waive section 552.103 by releasing portions of the information to the Texas Department of Transportation. This office has stated that a governmental entity which, because of its good-faith conclusion that it has a constitutional obligation to do so, provides an individual who will be a co-defendant in anticipated litigation with information relating to that litigation, is not precluded from invoking the predecessor provision of section 552.103. *See* Open Records Decision No. 454 (1986) (overruled in part on other grounds in Open Records Decision No. 468 (1987) at 4). Thus, if the city releases information to the Texas Department of Transportation based on a good-faith conclusion that it has a constitutional obligation to do so, we do not believe the city will thereby waive section 552.103.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 115351

Enclosures: Submitted documents

cc: Mr. David M. Valetutto
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(w/o enclosures)